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Attorneys for Plaintiff JENS ERIK SORENSEN,
as Trustee of SORENSEN RESEARCH AND
DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of	) Case No. 08 cv 00095 JW
SORENSEN RESEARCH AND)
DEVELOPMENT TRUST,	) KRAMER DECLARATION IN
	) SUPPORT OF PLAINTIFF'S
Plaintiff	) NOTICE OF RELIANCE ON
v.	) VERBAL INSTRUCTIONS FROM
	) COURT CLERK RE AMENDMENT
LEXAR MEDIA, INC., a Delaware	) OF ORDER AT DOCKET #62
Corporation; and DOES 1 – 100,)
	) Date: September 8, 2008
Defendants.	) Time: 9:00 A.M.
	) Courtroom 8, 4 th Floor
and related counterclaims.	) Judge: The Hon. James Ware

1
2 I, MELODY A. KRAMER, declare:

3 1. I am not a party to the present action. I am over the age of eighteen. I
4 have personal knowledge of the facts contained within the following paragraphs, and
5 could and would competently testify thereto if called as a witness in a court of law.

6 2. At all times relevant herein I have been an attorney for Sorensen
7 Research and Development Trust ("Sorensen"), Plaintiff in the above-captioned
8 matter.

9 3. This declaration is made in support of Plaintiff's Notice of Reliance on
10 Verbal Instructions from Court Clerk re Amendment of Order at Docket #62.

11 4. Immediately upon receipt of the Docket #62, Plaintiff's counsel,
12 Melody Kramer, immediately called Judge Ware's chambers and spoke with
13 Elizabeth Garcia. Ms. Kramer advised Ms. Garcia that Plaintiff had, in fact, timely
14 filed its supplemental briefing and supplied the docket number. Ms. Kramer further
15 advised Ms. Garcia that Plaintiff had also sent courtesy copies to the Court. Ms.
16 Garcia came back on the phone after a few minutes and confirmed that Plaintiff's
17 Supplemental Brief was timely filed and acknowledged receipt of the courtesy
18 copies. Ms. Garcia explained that the Order had been prepared before she had seen
19 them.

20 5. Ms. Garcia then advised that due to the fact that Plaintiff had timely
21 filed its supplemental briefing, no further briefing should be filed, but that the
22 hearing date was still changed. Ms. Kramer understood this to mean that neither
23 Plaintiff nor Defendant were to file any further papers on this motion, and advised
24 Defendant's counsel of the same via email.

25 6. Ms. Kramer presumed that an amended order would issue to supercede
26 Docket #62, though Ms. Garcia made no mention of it. Ms. Kramer did not receive
27 any response from Defendant's counsel regarding the matter, and thus presumed that
28 they had no different understanding than Plaintiff had.

1 7. Having not received any amended order, on September 8, 2008, Ms.
2 Kramer again called Judge Ware's chambers to confirm that no further briefing was
3 to be filed, and asked whether an amended order would be filed. Ms. Garcia talked
4 with Ms. Kramer again and explained that in light of finding that Plaintiff had timely
5 filed its supplemental briefing on August 29th, Plaintiff was not to file any additional
6 briefing on September 5th, but that Defendant was still allowed to file a reply brief
7 responding to Plaintiff's supplemental briefing. Ms. Kramer inquired why
8 Defendant would be allowed to respond to Plaintiff's supplemental briefing, but not
9 provide an equal opportunity for briefing by Plaintiff? Ms. Garcia was unsure. Ms.
10 Garcia explained that this was her understanding.

11 8. Ms. Garcia forwarded Ms. Kramer to the head clerk's voicemail, and
12 Ms. Kramer left a voicemail message with the same inquiry. As of the filing of this
13 Notice, no return phone call had been received by Ms. Kramer and no corrected
14 order has been filed.

15 9. After 10 p.m. on September 8th, Defendant Lexar filed a Response to
16 Plaintiff's Supplemental Brief, even though Defendant's counsel knew that
17 Plaintiff's counsel was of the understanding that the further briefings in the Order
18 were not to occur, and without advising Plaintiff's counsel of their intent.

19 10. I have reviewed the documents produced by Lexar in this case and
20 found a business card showing that PC Partners is a Taiwanese company.

21 11. Likewise, document production from Lexar shows that AMCO and
22 ATG have Taiwanese and mainland China addresses; it is unclear where the Accused
23 Products are actually manufactured or by whom.

24 12. According to document production from Lexar, Fourté was the
25 company with whom Lexar worked to originally develop both the product design
26 and mold tooling for the Accused Products, and at least two Lexar employees who
27 dealt with Fourté are still in employ with Lexar – Jeff Chalmers and Ezequiel
28 Ramirez. An example of document pages that reveal this fact are bates-numbered

1 LEXSRDT00001025, 1027, 1028, and 1030-1032.

2 13. Plaintiff noticed a deposition of Lexar under Fed.R.Civ.P. Rule 30(b)(6)
3 for:

4 Lexar Corp's designated person(s) most knowledgeable witness with
5 regard to the topics identified in the **TOPICS FOR EXAMINATION**
6 below. . . .

7 **Topic Number 1:**

8 For all of the Accused Products, be able to answer detailed
9 technical questions regarding the manufacturing process utilized to form
10 the external plastic housings, including, but not limited to, questions
11 with regard to whether or not any units were manufactured utilizing two
12 plastic injections utilizing any common mold part for all and any time
13 periods from January 7, 2002 through, February 8, 2008, inclusive.

14 **Topic Number 2:**

15 For all of the Accused Products, be able to provide the
16 foundation and basis, that is, the source, of all information used to
17 answer technical questions regarding the manufacturing process utilized
18 to form the external plastic housings, including, but not limited to,
19 questions with regard to whether or not any units were manufactured
20 utilizing two plastic injections utilizing any common mold part for all
21 and any time periods from January 7, 2002 through, February 8, 2008,
22 inclusive. This foundational basis includes documents, witnesses,
23 personal inspections or other sources for the information to which the
24 deponent is testifying.

25
26 SWORN TO under penalty of perjury of the laws of the State of California
27 and the United States, this Tuesday, September 09, 2008.
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/s/ Melody A. Kramer

Melody A. Kramer, Esq.
Attorney for Plaintiff
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